

SERVICE DATE – NOVEMBER 21, 2016

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 70 (Sub-No. 6X)

FLORIDA EAST COAST RAILWAY, L.L.C.—ABANDONMENT  
EXEMPTION—IN MIAMI-DADE COUNTY, FLA.

Decided: November 18, 2016

Florida East Coast Railway, L.L.C. (FEC) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 1.21-mile rail line on its South Little River Branch Line, between mileposts LR 11+3989 and LR 13+0000 (the Line), in Miami-Dade County, Fla. Notice of the exemption was served and published in the Federal Register on February 10, 2016 (81 Fed. Reg. 7,185). The exemption became effective on March 11, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on February 16, 2016, solicited comments, and issued a Final EA. OEA recommended two conditions in the Final EA, and the Board imposed those conditions in a decision served on March 10, 2016.<sup>1</sup>

In the EA, OEA stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On November 1, 2016, Florida East Coast Industries, LLC (FECI), filed late a request for the issuance of a notice of interim trail use (NITU) for the right-of-way, to permit FECI to negotiate with FEC for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.<sup>2</sup> Pursuant to 49 C.F.R. § 1152.29, FECI has submitted a statement of its willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the

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<sup>1</sup> The conditions imposed in the March 10, 2016 decision remain in effect.

<sup>2</sup> The Board's February 10, 2016 notice provided that requests for interim trail use/rail banking were to be filed by February 22, 2016. However, in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that FECI's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Ry.—Aban. Exemption—in Starke Cty., Ohio, AB 227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

right-of-way for rail service. By response filed on November 1, 2016, FEC indicated its willingness to negotiate with FECI for interim trail use.

Because FECI's request complies with the requirements of 49 C.F.R. § 1152.29 and FECI is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, FEC may fully abandon the Line, subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. FECI's late-filed request for a NITU under 16 U.S.C. § 1247(d) is accepted.
3. Upon reconsideration, the February 10, 2016 notice exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit FECI to negotiate with FEC for trail use for a period of 180 days from the service date of this decision and notice, until May 20, 2017.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use

agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by May 20, 2017, for the right-of-way, interim trail use may be implemented. If no agreement is reached, FEC may fully abandon the Line, subject to any outstanding conditions.

9. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.